

Water Rights Compact

Presented by:

Craig Tepper

Jerry Straus

Stephen Walker

**The
Seminole
Tribe of Florida**



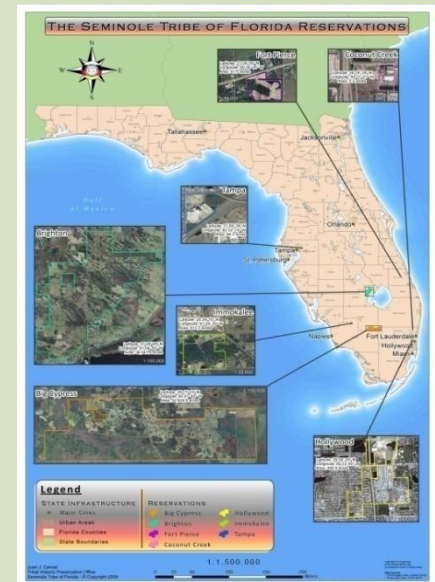
Presentation Objectives

To explain:

- The Past: Prior to the enactment of the Water Rights Compact the State of Florida, the South Florida Water Management District and the Seminole Tribe ("Tribe") had a number of serious disagreements over the management of water resources and the environment of various Seminole Reservations;
- The Present: We will explain how the Compact works and the history of how the District and the Tribe have used the provisions of the Compact to find creative solutions to solve many problems involving the waters and environment of these Reservations;
- The Future: We will provide a preview of how the Compact might be used to resolve new water resource issues facing the State, the District and the Tribe.

The Tribe Today

A Path to the Future



The Tribe Today

A Path to the Future



The Tribe Today

A Path to the Future



Overview

As of the 1980s there was no agreement as to the extent and nature of Seminole water rights and who had authority to regulate water use on Tribal lands.

One thing that was clear is that there were three separate jurisdictions involved:

- Tribal jurisdiction over water and environmental regulation on the Seminole reservations;
- State jurisdiction over state waters and environmental matters;
- Federal jurisdiction over waters of the United States and a variety of environmental matters.



The Legal Framework Prior to the Compact

- Prior to the Compact the Tribe had obtained a formal opinion from the Hobbs Straus firm that the Tribe had Winter's Doctrine water rights under federal law.
- In Winters v. United States the U.S. Supreme Court established that American Indian Tribes have unique federal rights to waters that arise on, border, traverse or are encompassed within their reservations.
- The State of Florida and the District did not accept the Tribe's view on these issues and it seemed likely that litigation would be needed to resolve them.



General Background



- While the Tribe claimed that they had Winters Doctrine rights, these rights had never been quantified or specifically recognized by any court, state or federal authorities.
- The Florida Water Resources Act of 1972 established a state permit system in lieu of the previous riparian system but took no account of the federal water rights claimed by the Tribe.
- Prior to the adoption of the Compact the Tribe, the State and the Central & Southern Flood Control District had frequent and intense disagreements over the management of surface waters and its impact on Tribal lands.

Disputes Prior to the Compact

- The Tribe had a suit pending in federal court against the District and the State over the State's conveyance of a flowage easement to the Central & Southern Flood Control District.
- State blocked tribal access to six (6) sections of Tribal land in the Palm Beach County portion of the East Big Cypress Reservation because the State wanted to use the land for Everglades restoration.
- The Tribe had blocked immediate approval of the District's ACOE permit request for the Modified Hendry County Plan.

The Signing of the Compact

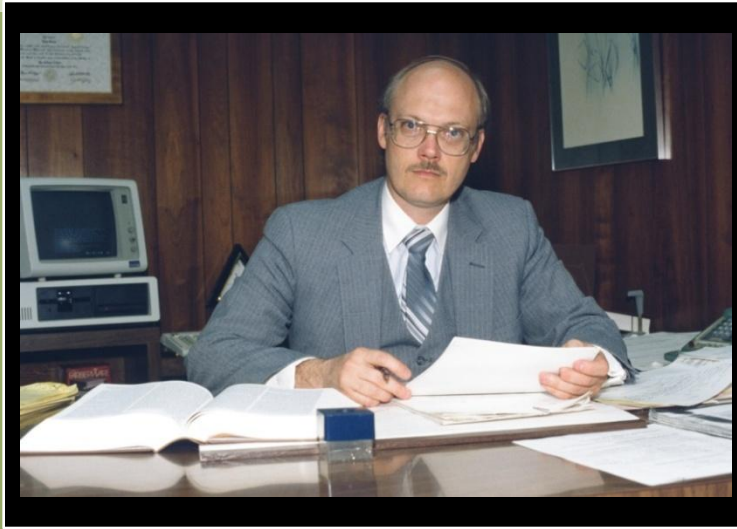


The Compact

- The 1987 Water Rights Compact defined the rights and obligations of the Tribe pertaining to water and the environment.
- The Compact was approved at the same time as the settlement of the Tribe's pending land claims.

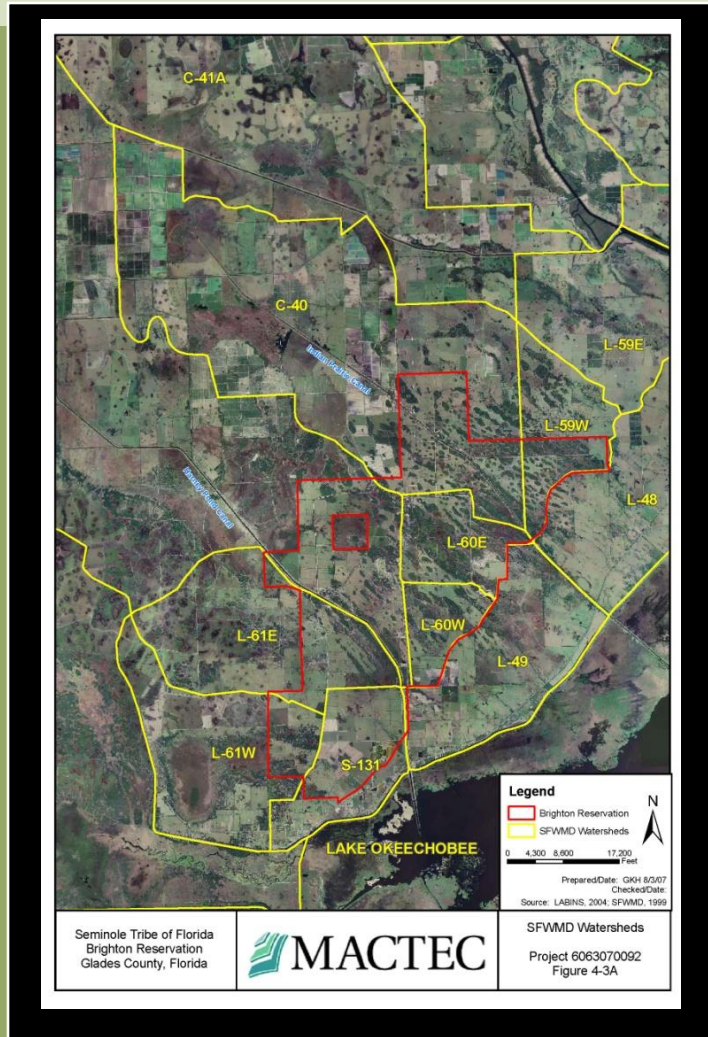


Compact Principles



- The Water Rights Compact was drafted in harmony with the essential statutory provisions pertaining to both water law and environmental law principles of the State system.
- The 1987 Water Rights Compact was ratified by Congress and the Florida Legislature and given the force and effect of both federal and state law.

Compact Solutions



- The Compact was designed to create a comprehensive system of regulation which protected the Tribe's water rights and development potential, without impinging on tribal sovereignty.
- Under the Compact the Tribe agreed to exchange all of its claimed federal water rights for substitute federal rights recognized by the State, the District and the United States.

An Overview of the Compact

Under the Compact, the Tribe agreed to follow the essential provisions of state water law and environmental law with certain exceptions and preferences:

- All existing Tribe construction was "grandfathered" from Compact Compliance
- The Tribe was given a limited preference with respect to competing uses of groundwater.

The Tribe agreed to give "reasonable assurance" that:

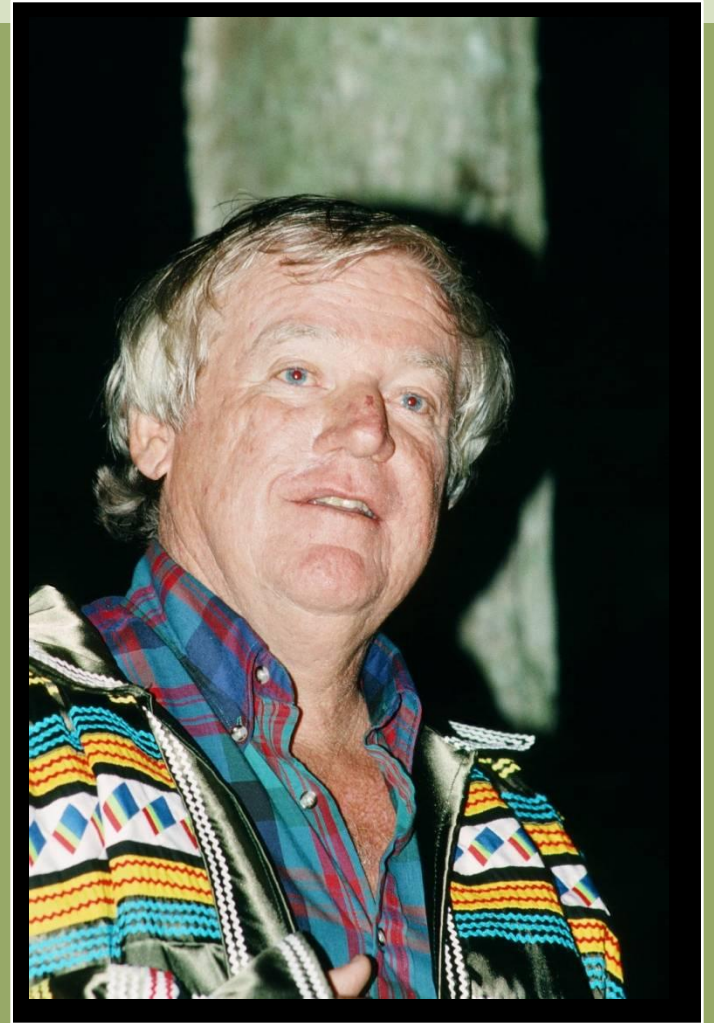
- its management and storage of surface waters would provide adequate flood protection and not cause certain adverse environmental impacts;
- any proposed consumptive water use would be a "reasonable beneficial use"; "consistent with the essential terms and conditions of the State system and not cause significant adverse environmental impacts; or have other specified adverse Consequences.

An Overview of the Compact

- Specific provisions were made for the Tribe's Reservations to ensure that the Tribe would receive a commensurate share of the available surface water while allowing the District to accommodate the already permitted water uses in these areas.
- The Tribe was granted the right to enter into "Landowner Agreements" with landowners who might be affected by Tribal operations to settle disputes involving water uses and related matters. Such agreements, if approved by the District, are given the effect of the Compact with respect to the rights of the parties to the agreement.
- The Tribe agreed to provide an annual Work Plan that is subject to review and comment by the District and the State.
- If there is objection to any of the development provided for in the Work Plan, the Tribe may proceed, despite objection, if the Work Plan complies with the Compact.

The Compact

- The Tribe agreed to comply with more detailed provisions set forth in a comprehensive "Criteria Manual" with the understanding that it could show compliance with the Compact even if some action was inconsistent with a provision of the Manual.
- The District and the State were not left without a remedy. It could seek Tribal compliance with the Compact through administrative processes and if necessary federal court.



Compact Goals Achieved



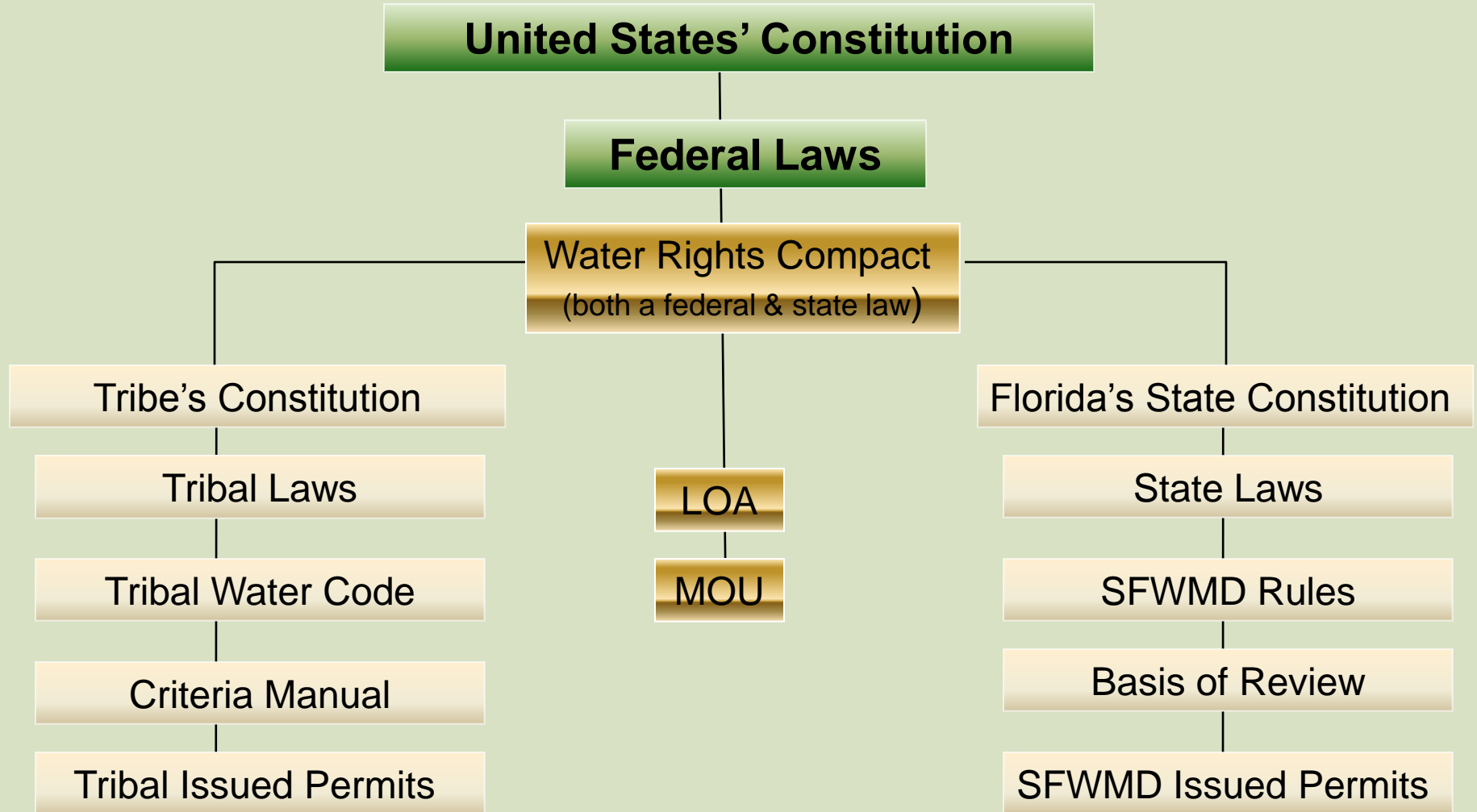
Tribal Goals Achieved:

- Preserved / acknowledged Tribe sovereignty
- Secured recognition of federal water rights
- Orderly development of reservation lands
- Obtained protection from adverse impacts by neighbors

SFWMD / State Goals Achieved:

- Formalized the process for SFWMD input on tribal management of water in a process that gives due respect to Tribal sovereignty
- Mechanism obtained to have input in the management of Tribal lands in a manner consistent with Florida water and environmental laws.

The Compact harmonized the State & Tribal Systems



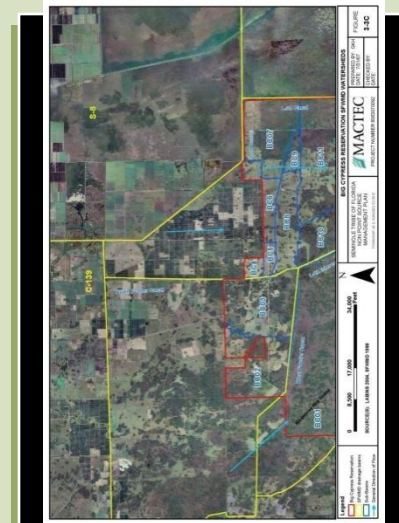
Milestones of Success

- History of compromises on both sides has avoided the Dispute Resolution mechanisms in the Compact for over twenty (20) years – never been used
- 22 Work Plans and numerous amendments
- Resolution of Enforcement actions
- Wetland Criteria Manual
- Development Right of Way Agreement

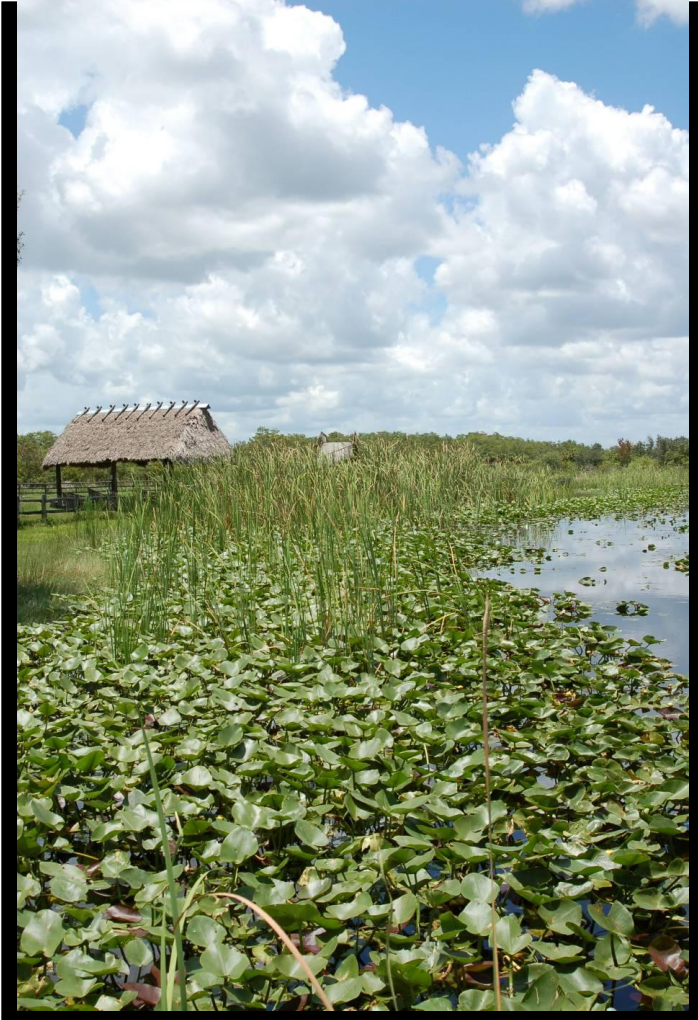


Milestones of Success

- District access (construction)
- Water quality standards – development and neighboring landowners' discharges
- SFWMD projects on Tribal land
- Water supply plans, permits, shortage
- STA Construction
- Recent expansion Lake Okeechobee regulation schedule



Partnerships: Issues on the Horizon



- **River of Grass**
- **Everglades Restoration**
- **CERP Everglades Restoration**
- **Minimum Flows & Levels for Reservations**
- **Restoring Water Conservation Area 3A**
- **Continued Growth and Increase in Water Demand**
- **Development of Numeric water quality standards**
- **Reduction of Exotic Nuisance Trees**
- **Protection of Endangered Species**

Questions?

**The
Seminole
Tribe of Florida**



Craig Tepper
ctepper@semtribe.com
(954) 965-4380

Jerry Straus
jstraus@hobbsstraus.com
(202) 822-8282

Stephen Walker
swalker@llw-law.com
(561)640-0820